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SERVICE DATE – NOVEMBER 26, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 221X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION— IN SANTA CLARA COUNTY, CA

Decided: November 18, 2004

By petition filed on August 10, 2004, Union Pacific Railroad Company (UP) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon and discontinue service over a line, known as the San Jose Industrial Lead (SJIL), extending from milepost 16.3 to milepost 19.6, for a distance of 3.3 miles, in Santa Clara County, CA. Notice of the filing was served and published in the Federal Register on August 30, 2004 (69 FR 52960-61). The petition for exemption will be granted, subject to environmental and standard employee protective conditions.

BACKGROUND

UP states that the portion of the line from milepost 16.30 to milepost 17.49 is owned by the Santa Clara Valley Transportation Authority (SCVTA). UP is discontinuing its trackage rights and abandoning its freight easement over this segment. The portion of the line from milepost 17.49 to milepost 19.60 is owned and operated by UP. UP is proposing to abandon this segment.

According to UP, shipper plant relocations off the line and changes in logistical patterns have eliminated rail activity on the line, with the exception of Smurfit Stone Recycling Corporation (Smurfit), the only shipper on the line. Traffic data submitted by UP show that Smurfit shipped 138 carloads of scrap or waste paper in 2002, 123 carloads in 2003, and 26 carloads in the first quarter of 2004. UP estimates that the base and forecast year traffic projection will be 99 carloads. UP indicates that Smurfit will continue to receive rail service from UP via a new spur line, which will connect Smurfit's facility to another UP line located southeast of the SJIL. UP also indicates that the San Jose area is served by several major highways, including Interstates 880, 280, and 680. UP maintains that it is unlikely that new rail-oriented customers would locate along the line because development trends are moving away from the line, and points out that any overhead traffic can move over an adjacent UP line.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10903, a rail line may not be abandoned or service discontinued without our prior approval. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not necessary to protect shippers from the abuse of market power.

Detailed scrutiny under 49 U.S.C. 10903 is not necessary to carry out the rail transportation policy. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by relieving UP from the costs of owning and maintaining a portion of the line [49 U.S.C. 10101(5) and (9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. It appears that Smurfit, the only active shipper on the line, will continue to receive rail service via a new spur connecting its facility to another UP line located southeast of the SJIL. Nevertheless, to ensure that Smurfit is informed of our action, we will require UP to serve a copy of this decision on Smurfit within 5 days of the service date of this decision and certify to us that it has done so. Given our market power finding, we need not determine whether the proposed abandonment is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of its employees. Accordingly, as a condition to granting this exemption, we will impose the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

UP has submitted an environmental report and has notified the appropriate Federal, state, and local agencies of the opportunity to submit information concerning the energy and environmental impacts of the proposed action. See 49 CFR 1105.11. The Board's Section of Environmental Analysis (SEA) has examined the environmental report, verified the data it contains, and analyzed the probable effects of the proposed action on the quality of the human environment. SEA served an environmental assessment (EA) on October 8, 2004. Comments to the EA were requested by November 8, 2004.

In the EA, SEA states that the National Geodetic Survey (NGS) has identified one geodetic station marker along the rail line that may be affected by the proposed abandonment and has requested 90 days' notification in advance of any activities that may disturb or destroy this station marker.

Therefore, SEA recommends that UP consult with NGS and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers on the line.

SEA also states in the EA that the California Office of Historic Preservation has not completed its review of the proposed abandonment. Accordingly, SEA recommends that UP retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

SEA further states in the EA that the California Coastal Commission (CCC) has not completed its review of the proposed abandonment. Accordingly, SEA recommends that UP consult with CCC before beginning any salvage activities, to determine whether a California State Coastal Management (CSCM) consistency certification is required. If a consistency certification is required, UP shall be prohibited from performing any salvage activities until it obtains consistency certification and shall then notify SEA, pursuant to the Coastal Zone Management Act, 16 U.S.C. 1451 et seq. (CZMA).

No comments on the EA were filed by the due date. Therefore, the conditions recommended by SEA in the EA will be imposed. The proposed abandonment, as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

SEA has indicated in its EA that the right-of-way may be appropriate for other public uses under 49 U.S.C. 10905. Public use requests were due no later than 20 days after publication of the notice of the petition in the Federal Register, or by September 20, 2004. No one has sought a public use condition, and none will be imposed.

It is ordered:

1. Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 10903 the abandonment and discontinuance of service by UP of the above-described line, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979), and subject to the conditions that UP: (1) consult with NGS and notify NGS 90 days prior to salvage activities to plan for the relocation of the identified station marker; (2) retain its interest in and take no steps to alter the historic integrity of all sites and structures located on the right-of-way that are 50 years old or older until completion of the section 106 process of the NHPA; and (3) consult with CCC before beginning salvage activities to determine whether a CSCM consistency certification is required, and if so, UP shall be prohibited from performing any salvage activities until it obtains certification, and notifies SEA, pursuant to the CZMA.

2. UP is directed to serve a copy of this decision on Smurfit within 5 days after the service date of this decision and to certify to the Board that it has done so.

3. An offer of financial assistance (OFA) under 49 CFR 1152.27(c)(1) to allow rail service to continue must be received by the railroad and the Board by December 6, 2004, subject to time extensions authorized under 49 CFR 1152.27(c)(1)(i)(C). The offeror must comply with 49 U.S.C. 10904 and 49 CFR 1152.27(c)(1). Each OFA must be accompanied by the filing fee, which currently is set at \$1,200.¹ See 49 CFR 1002.2(f)(25).

4. OFAs and related correspondence to the Board must refer to this proceeding. The following notation must be typed in bold face on the lower left-hand corner of the envelope: **“Office of Proceedings, AB-OFA.”**

5. Provided no OFA has been received, this exemption will be effective on December 26, 2004. Petitions to stay must be filed by December 13, 2004, and petitions to reopen must be filed by December 21, 2004.

6. Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by November 26, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire. If a legal or regulatory barrier to consummation exists at the end of the 1-year period, the notice of consummation must be filed no later than 60 days after satisfaction, expiration, or removal of the legal or regulatory barrier.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary

¹ Effective October 31, 2004, the filing fee for an OFA increased to \$1,200. See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services-2004 Update, STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).